IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2007

CORAM

THE HONOURABLE MR. JUSTICE P.K.MISRA
AND
THE HONOURABLE MR. JUSTICE K.MOHAN RAM

Habeas Corpus Petition No.1110 of 2006

Rajendiran .. Petitioner

-Vs.-

1. State of Tamil Nadu
Rep. by its
Secretary to Government
Prohibition and Excise Department
Fort St. George, Chennai - 600 009.

2. The District Collector and
District Magistrate of Tiruvannamalai District
Tiruvannamalai .. Respondents

Prayer.:- Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus to call for the entire records, relating to petitioner's detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 14.09.2006 on the file of the second respondent herein made in proceedings D.O.No.50/2006-C2, quash the same as illegal and consequently direct the respondents herein to produce the said petitioner namely Rajendiran before this Court and set the petitioner at liberty from detention, now detained in Central Prison, Vellore.

For Petitioner : Mr. C.C.Chellappan.
For Respondents : Mr. M.Babu Muthu Meeran,
Additional Public Prosecutor.

O R D E R

K.MOHAN RAM, J.

The petitioner, who is detained as a "Bootlegger" as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), by the impugned detention order, dated 14.09.2006, challenges the same in this petition.

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2. Heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor for the respondents.

3. The learned counsel for the petitioner put forth the following contentions:-

(i) Learned counsel for the petitioner drew our attention to paragraphs 3 and 4 of the grounds of detention wherein the Detaining Authority has stated as follows:-

> "3 (e) ... Further he is in the habit of transporting, storing R.S. and mixing poisonous atropine in the arrack and sold them to the public knowing the fact that it is a poisonous one and it will endanger to the human life".
>
> "4. From the above materials, I am satisfied that Thiru.Rajendran is a "BOOTLEGGER" transporting R.S. And selling ID arrack mixed with poisonous substance in contravention of the provisions of the Tamil Nadu Prohibition Act 1937 and thereby acted in a manner prejudicial to the maintenance of public order and public health".

and contended that the Detaining Authority has concluded that he is satisfied that the detenu is a 'Bootlegger' transporting R.S. and selling ID arrack mixed with poisonous substance in contravention of the provisions of the Tamil Nadu Prohibition Act 1937, in the absence of any materials being placed before him to show that the detenu was selling ID arrack mixed with poisonous substance and therefore the ultimate conclusion and detention of the petitioner as a Bootlegger cannot be sustained.

(ii) Learned counsel for the petitioner further contended that the sister of the petitioner-Govindammal made a representation to the second respondent on 20.09.2006, within 12 days from the date of detention order, but the second respondent failed to consider the said representation in the proper perspective and the same has not been disposed off till date, and the said contention has been raised in ground (d) of the above writ petition. While referring to the said contention, in paragraph 10 of the counter affidavit filed by the second respondent, it is stated that on the said representation dated 20.09.2006 after calling for the remarks from the Sponsoring Authority, it was duly, properly and expeditiously considered without any delay and a report was submitted on 26.09.2006 itself and the Government has also considered the same and the same was disposed off on 26.10.2006 and the result was also communicated to the petitioner's sister-Govindammal and to the detenu also. Learned counsel for the petitioner submitted that the detention order was passed on 14.09.2006 and the same was approved on 25.09.2006 and in between on 20.09.2006 the said representation was sent to the Detaining Authority, who had submitted the representation along with his report on 26.09.2006 itself but the Government had disposed of the same only on 26.10.2006 belatedly and moreover the said delay has not at all been explained in the counter affidavit. The unexplained delay, according to the learned counsel, has seriously affected the valuable rights of the petitioner.

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(iii) Learned counsel for the petitioner further submitted that though the detenu was arrested in connection with the ground case on 07.07.2006 itself, the order of detention came to be passed only on 14.09.2006 and as such due to the delay in passing the order of detention by the authority the nexus between the activities allegedly committed by the detenu and the necessity for passing the order of preventive detention was lost.

4. Per contra, the Learned Additional Public Prosecutor submitted that there was no delay in disposing of the representation sent by the petitioner's sister. He further submitted that the petitioner was selling I.D. Arrack mixed with poisonous substance and as such the second contention of the learned counsel for the petitioner is not sustainable. He further submitted that the alleged delay between the date of arrest and the date of passing of the order of detention will not in any way affect the validity of the detention order.

5. We have carefully considered the submissions made on either side.

6. As far as the first contention of the petitioner is concerned, we have verified the relevant materials and it is seen that in none of the adverse cases as well as in the ground case, the petitioner/detenu had been charged with an offence under Section 4(1)(i) of the Tamil Nadu Prohibition Act for selling illicit Arrack mixed with poisonous substance, whereas in all the four adverse cases the allegation against the petitioner/detenu was that he was keeping illicit Arrack mixed with poisonous Arrack. In such circumstances, when no materials are available in respect of selling of illicit Arrack mixed with poisonous substance and no case was registered against the petitioner/detenu for an offence under Section 4(1)(i) of the Tamil Nadu Prohibition Act, we are of the considered view that the conclusion arrived at by the Detaining Authority that the detenu was also found selling 'I.D. Arrack mixed with poisonous substance' has no basis. Therefore, the impugned detention order is liable to be quashed on the ground of non-application of mind. A similar view has been taken by a Division Bench of this Court in its order, dated 05.07.2006, passed in H.C.P.No.436 of 2006 (S.Parimala Vs. The State of Tamil Nadu, Rep. by the Secretary, Government of Tamil Nadu, Prohibition and Excise Department, Fort St. George, Chennai - 9 and another).

7. As rightly contended by the learned counsel for the petitioner, in paragraph 10 of the counter affidavit, though it is stated that the representation of the petitioner's sister dated 20.09.2006 was submitted by the Detaining Authority with his report on 26.09.2006 itself, the same was disposed of only on 26.10.2006, but the intervening delay of one month has not at all been explained. In our considered view, the unexplained delay in disposing of the representation vitiates the order of detention.

8. The Apex Court in the decision rendered in the case of Venmathi Selvam Vs. State of Tamil Nadu reported in 1998 (5) S.C.C. 510, while considering the fact of the unexplained delay of about 3 weeks in

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considering the representation of the detenu on the order of detention, has observed as follows:-

> "... Though the delay is not long, it has remained unexplained. Though the delay by itself is not fatal, the delay which remains unexplained becomes unreasonable. In spite of this well-settled legal position the State Government has failed to explain satisfactorily that it had dealt with the representation of the detenu as promptly as possible. It appears that oblivious of the correct legal position and its obligations in matters of preventive detention it has dealt with the representation of the detenu in a routine manner. This indifference of the Government is the cause for rendering the continued detention of the detenu illegal."

9. (i) A Constitution Bench of this Court in Jayanarayan Sukul Vs. State of West Bengal, (1970) 2 SCR 225 = (A.I.R.1970 S.C. 675), while laying down the principles to be followed in regard to the representation of the detenu, observed as follows:-

> "... there should not be any delay in the matter of consideration. Though no hard and fast rule can be laid down as to the measure of time taken by the appropriate authority for consideration, it has to be remembered that the Government has to be vigilant in the governance of the citizens. The fundamental right of the detenu to have his representation considered by the appropriate Government would be rendered meaningless if the Government does not deal with the matter expeditiously but at its own sweet-will and convenience".

(ii) In A.I.R. 1972 S.C. 2215 (Niranjan Singh Vs. State of M.P.), after considering the above said decision, the Apex Court has observed as follows:-

> "4. .... the petitioner has specifically given the date of his representation and the date on which he said it was considered and rejected, which on the face of it shows that there has been an inordinate delay which makes it incumbent on the State to explain it and satisfy the Court that there was justification for that delay. Since the State has not filed any counter-affidavit explaining why the representation of the detenu has not been expeditiously disposed of nor has it chosen to set out the various steps taken to comply with the mandatory provisions of the Act, the detention must be held to be illegal".

(iii) Recently, the Apex Court in the decision reported in 2006 (3) S.C.C. Crl 50 (Senthamil Selvi Vs. State of Tamil Nadu and another) while considering the question of delay in disposal of the representation of the detenu has observed that if there is no negligence or callous inaction or

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avoidable red tapism on the facts of the case, the Court would not interfere. But, detention becomes vulnerable when there is remissness, indifference or avoidable delay on the part of the authority. The duty of Court is to see that efficacy or safeguards provided in the law of preventive detention is not lost in mechanical, routine, dull casualness and chill indifference, on the part of the authorities entrusted with their application. There can be no hard-and-fast rule as to the measure of reasonable time for disposal of representation.

10. Further as pointed out by the Apex Court time and again in a number of decisions a Constitutional protection is given to every detenu which mandates the grant of liberty to the detenu to make a representation against detention, as imperated in Article 22(5) of the Constitution. It also imperates the authority to whom the representation is addressed to deal with the same with utmost expedition. The representation is to be considered in its right perspective keeping in view the fact that the detention of the detenu is based on subjective satisfaction of the authority concerned, and infringement of the Constitutional right conferred under Article 22(5) invalidates the detention order. Personal liberty protected under Article 21 is so sacrosanct and so high in the scale of constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law.

11. Article 21 of the Constitution having declared that no person shall be deprived of life and liberty except in accordance with the procedure established by law, a machinery was definitely needed to examine the question of illegal detention with utmost promptitude.

12. The Apex Court has also pointed out in a number of cases that if there is negligence and carelessness on the part of the authorities in disposing of the representation sent by the detenu and the delay remains unexplained, the order of detention is liable to be quashed. In the instant case, as pointed out above, there is absolutely no explanation whatsoever in the counter affidavit filed by the respondents explaining the delay in disposing of the representation dated 20.09.2006.

13. In the light of the above said legal principles laid down by the Apex Court the instant case on hand has to be considered. It is the duty of this Court to see that efficacy or safeguards provided in the law of preventive detention is not lost in mechanical, routine, dull casualness and chill indifference, on the part of the authorities entrusted with their application, though there can be no hard-and-fast rule as to the measure of reasonable time for disposal of representation. If there is delay and such delay is unexplained it will render the detention of the detenu illegal. It has to be pointed out that admittedly the representation was sent on 20.09.2006 and the same was rejected on 26.10.2006 and though a counter affidavit has been filed, the respondents have not explained as to why the representation was not expeditiously

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disposed of nor the respondents have chosen to set out the various steps taken to comply with the mandatory provisions of the Act, therefore, in our considered view, the detention must be held to be illegal.

14. The third contention of the learned counsel for the petitioner has to be rejected in the light of the law laid down in the following decision:-

In the decision reported in (1989) 4 S.C.C. 741 (T.A.Abdul Rahman Vs. State of Kerala) in paragraphs 10 and 11 the Apex Court has laid down as follows:-

> "10. The conspectus of the above decisions can be summarised thus:
> This question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the Court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the Court has to investigate whether the casual connection has been broken in the circumstances of each case.
>
> 11. Similarly when there is unsatisfactory and unexplained delay between the date of order of detention and the date of securing the arrest of the detenu, such a delay would throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority leading to a legitimate inference that the detaining authority was not really and genuinely satisfied as regards the necessity for detaining the detenu with a view to preventing him from acting in a prejudicial manner".

If the facts of this case are considered in the light of the above said law laid down by the Apex Court, it cannot be said that there is undue and long delay between the prejudicial activities and the passing of the detention order. The occurrence relating to the ground case has occurred on 05.07.2006. Thereafter, as stated in paragraph 14 of the counter affidavit filed by the second respondent, the post-mortem certificates in respect of the deceased persons and other connected records had to be collected and it has taken some time and the Sponsoring Authority after collecting the above said relevant materials has sent the proposal for the

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detention of the detenu under Act 14 of 1982 on 02.09.2006 and ultimately the order of detention has been passed on 14.09.2006 and as such it cannot be said that there is undue delay in passing the order of detention and in the considered view of this Court, the delay if any has been well explained and further it cannot be said that the live-link between the prejudicial activities and the purpose of detention is snapped in this case. For the above said reasons, the third contention of the learned counsel for the petitioner is rejected.

15. Though the charges levelled against the detenu are serious in nature, in view of the reasons stated above, we are constrained to quash the order of detention and accordingly the order of detention is quashed. The detenu shall be released forthwith, unless he is required in connection with any other case. The Habeas Corpus Petition is allowed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

kk/srk

To
1. The Secretary to Government, State of Tamil Nadu
Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.
2. The District Collector and District
Magistrate of Tiruvannamalai District,
Tiruvannamalai.
3. The Superintendent, Central Prison, Vellore.
4. The Joint Secretary to Govt., Public [Law and Order], Fort St. George, Chennai 9.
5. The Public Prosecutor, High Court, Madras.

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